

AMENDED IN SENATE APRIL 14, 2010

SENATE BILL

No. 1348

Introduced by Senator Steinberg

February 19, 2010

An act to add Section ~~14516~~ 14521.5 to the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, Steinberg. California Transportation Commission: guidelines.

Existing law generally provides for programming and allocation of state and federal funds available for transportation capital improvement projects by the California Transportation Commission, pursuant to various requirements. Existing law authorizes the commission, in certain cases, to adopt guidelines relative to its programming and allocation policies and procedures.

~~Existing law generally requires regulations adopted by state agencies to be reviewed and approved by the Office of Administrative Law pursuant to the Administrative Procedure Act. A regulation is required to be consistent with the statute to which it pertains. Existing law provides that no state agency may issue, utilize, enforce, or attempt to enforce any guideline that is a regulation, as defined, unless the guideline has been adopted as a regulation.~~

~~This bill would provide that guidelines adopted by the commission shall have no force or effect unless adopted as regulations pursuant to the Administrative Procedure Act.~~

Existing law, the Administrative Procedure Act, generally governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the

Office of Administrative Law. Existing law, in certain instances, exempts state agencies from these requirements.

This bill would establish specified procedures that the commission would be required to utilize when it adopts guidelines pursuant to a statutory authorization or mandate that exempts the commission from the requirements of the Administrative Procedure Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) From time to time, the Legislature has authorized the*
4 *California Transportation Commission to adopt guidelines for the*
5 *development and administration of statutorily created*
6 *transportation programs.*

7 *(b) Examples of the legislative authorization described in*
8 *subdivision (a) include, but are not limited to, the authority for*
9 *guidelines for the administration of transportation programs*
10 *funded by the Highway Safety, Traffic Reduction, Air Quality, and*
11 *Port Security Bond Act of 2006 (Chapter 12.49 (commencing with*
12 *Section 8879.20) of Division 1 of Title 2 of the Government Code),*
13 *including the Corridor Mobility Improvement Account (CMIA)*
14 *and the Highway-Railroad Crossing Safety Account.*

15 *(c) In 2009, the commission also adopted program guidelines*
16 *for the implementation of the public-private partnership authority*
17 *the Legislature granted to the Department of Transportation*
18 *(Caltrans) and to regional transportation planning agencies*
19 *pursuant to Section 143 of the Streets and Highways Code.*

20 *(d) The Legislature has exempted program guidelines adopted*
21 *by the commission from the Administrative Procedure Act (Chapter*
22 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
23 *Title 2 of the Government Code) so that the commission may adopt*
24 *guidelines quickly and may amend adopted guidelines in response*
25 *to quickly changing circumstances.*

26 *(e) On some occasions, the commission's process for adopting*
27 *program guidelines has lacked transparency and has not provided*
28 *the public with ample opportunity to fully review and comment on*
29 *proposed guidelines.*

1 (f) *To ensure the commission's process for the adoption of*
2 *program guidelines is understandable, predictable, and*
3 *transparent, and to ensure the commission's process provides*
4 *ample opportunity for public review and comment on proposed*
5 *guidelines, it is necessary to place into statute a process for the*
6 *adoption of program guidelines by the commission.*

7 SEC. 2. *Section 14521.5 is added to the Government Code, to*
8 *read:*

9 14521.5. (a) *Notwithstanding any other law, in instances where*
10 *the commission adopts guidelines pursuant to a statutory*
11 *authorization or mandate and the adoption of the guidelines is*
12 *exempted from the rulemaking provisions of the Administrative*
13 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*
14 *Part 1), the commission shall adopt guidelines using the procedures*
15 *established pursuant to this section.*

16 (b) *The commission's general counsel shall review the proposed*
17 *guidelines for matters such as necessity, authority, clarity,*
18 *consistency, reference, and nonduplication, and recommend any*
19 *proposed action to the commissioners. For purposes of this section,*
20 *"necessity," "authority," "clarity," "consistency," "reference,"*
21 *and "nonduplication" shall each have the same meaning as defined*
22 *in Section 11349.*

23 (c) *A program or policy guideline adopted by the commission*
24 *shall be adopted by a majority vote of the commission at a public*
25 *hearing. The public shall be provided the opportunity at the*
26 *hearing to comment on the proposed or draft guideline prior to a*
27 *vote of the commission on the pending matter.*

28 (d) *The proposed or draft guideline shall be sent, at least 30*
29 *days prior to the public hearing required pursuant to subdivision*
30 *(c), to any person who has requested notices of the meetings of*
31 *the commission and shall be available to the public in electronic*
32 *format. The proposed or draft guideline shall include notice of the*
33 *right of the public to comment orally or in writing on the proposed*
34 *or draft guideline either prior to or during the public hearing.*

35 (e) *The commission shall maintain a guideline adoption file*
36 *containing the public notice, public comments, and minutes of the*
37 *public hearing, including the action taken by the commission.*

38 (f) *The guideline adoption file shall contain a summary of each*
39 *objection or recommendation made and an explanation of how*
40 *the proposed guideline was changed to accommodate each*

1 *objection or recommendation, or the reason or reasons for making*
2 *no change.*

3 *(g) The commission shall include in its annual report to the*
4 *Legislature, required pursuant to Section 14535, a summary of its*
5 *activities related to the adoption of program or policy guidelines*
6 *during the previous calendar year, including, but not limited to,*
7 *a summary of the proposed guidelines considered by the*
8 *commission, a description of the actions taken by the commission,*
9 *and the votes of the commission on matters it considered.*

10 SECTION 1. ~~Section 14516 is added to the Government Code,~~
11 ~~to read:~~

12 ~~14516. Guidelines adopted by the commission shall have no~~
13 ~~force or effect unless adopted as regulations pursuant to the~~
14 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
15 ~~Section 11340) of Part 1).~~